PUBLIC FINANCE BHD

v.

SING TECK CORPORATION BHD & ORS

HIGH COURT SABAH & SARAWAK, KUCHING
CLEMENT SKINNER J
[APPLICATION FOR EXECUTION NO: 38-03-2002-III (I)]
28 JANUARY 2005

LAND LAW: *Charge - Rights of chargee - Land ordered sold in execution of judgment against chargor by third party - Order for sale - Whether to be made subject to charge - Order for sale giving chargee same rights againsnt proceeds of sale as it had against property sold - Whether rights of chargee preserved - Appeal against order for sale - Whether for a collateral purpose - Sarawak Land Code (Cap. 81) ss. 2, 119(1), 132(1), 143, 148 - Rules of High Court 1980 O. 51A*

By an agreement dated 12 December 1994, the first defendant subleased a piece of land ('the land') to Shell Timur Sendirian Berhad ('Shell Timur'). Thereupon, Shell Timur took a charge over the land as security for the RM300,000 it paid the first defendant ('the charge'). In 2001, the plaintiff obtained a judgment against the defendants, whereof the land was seized under a prohibitory order, and an order for the sale of the land was made by the deputy registrar ('the order'). Shell Timur made a representation to the deputy registrar for the sale to be made subject to the charge, albeit unsuccessfully. Aggrieved, Shell Timur appealed. Before the learned judge, the principal issue that arose was whether the order could be said to be bad, or was otherwise adverse to Shell Timur's position as chargee, when the deputy registrar, in making the order, had inter alia directed, *vide* Item 7 of the order, that, whilst the land was to be sold free of the charge – at a reserved price of RM1.16 million – Shell Timur would have the same right against the proceeds of sale as it had against the land.

Held (dismissing the appeal):

[1] The effect of ss. 2, 119(1), 132(1), 143 and 148 of the Sarawak Land Code ('the Code'), read together, is that, a charge, upon registration, will render the charged land liable as security for all sums of money and interest payable under the charge instrument. The indefeasible "interest" which the chargee acquires qua registered chargee is not a beneficial or

equitable interest in the charged land, but a legal interest affecting the land to the extent mentioned in the charge as well as the remedies available to the chargee under s. 148(2)(a), (b) and (c) in the event of default arising under the charge, namely, to apply for an order entitling the chargee to enter into possession and to be registered as proprietor of the charged land or to receive the rents and profits of the charged land or for the sale of the charged land. However, while the provisions of s. 148(2)(a), (b) and (c) are indicative of the remedies available to a chargee, the same are only available on default of the chargor and granted only at the discretion of the court. (p 791 f-i)

[2] The order is not inconsistent with the rights of Shell Timur as chargee, and nor has it compromised Shell Timur's security for the repayment of money it is owed. This is not a case where Shell Timur is seeking to avail itself of the statutory remedies available upon default by the first defendant chargor – and so – there is no qustion of the remedies stated in s. 148(2)(a), (b) and (c) being available to Shell Timur. Secondly, even if it could be argued that the order has infringed Shell Timur's right as chargee to enter into possession of the land and be registered as a proprietor, that right is only available on application and granted at the discretion of the court who will consider whether the grant of such an order would offend against the policy behind ss. 13A and 13B of the Code. Thirdly, what Shell Timur has as registered chargee, namely security over the land for the repayment of the RM300,000, has not been prejudiced because, by Item 7 of the order, Shell Timur was given the same right against the proceeds of sale as it had against the land. There is also no danger of Shell Timur not be paid the amount due, considering the reserve price that has been fixed for the land. Clearly, the rights of Shell Timur as chargee have not at all been defeated by the order. (p 792 a-i)

[3] What has been put in jeopardy by the plaintiff's enforcement of its judgment through the seizure of the land by the prohibitory order and the Order, is Shell Timur's position as unregistered sublessee of the land for 60 years. Therefore, Shell Timur's real purpose in this appeal is not to protect its interest as registered chargee, but to frustrate the intended sale of the land, thereby preserving Shell Timur's contractual rights as against the first defendant to be granted a sublease of the land. Thus, the appeal was brought to serve a collateral purpose. (p 793 d-g)

[4] It is incorrect to say that under O. 51A Rules of the High Court 1980, unless the consent of a chargee is obtained, charged land cannot be sold free of the charge. What is stated in para (c) of O. 51A r. 1(1) is itself indication that despite the "indefeasible" interest of a chargee, the court can order that charged land be sold free of the charge provided that an appropriate order is made to ensure that the chargee is given the same right against the proceeds of sale as he had against the property sold. (p 795 d-h)

Case(s) referred to:

Chai Koh Shon v. Public Bank Bhd [2004] 3 CLJ 189 CA ***(refd)***

Chua Hee Hung v. QBE Supreme Insurance Bhd [1990] 1 CLJ 669; [1990] 1 CLJ (Rep) 49 SC ***(refd)***

Karuppiah Chettiar v. Subramaniam [1971] 2 MLJ 116 ***(refd)***

Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin Ungku Mohamed [1998] 2 CLJ 340 CA ***(refd)***

T Damodaran v. Choe Kuan Him [1979] 2 MLJ 267 ***(refd)***

Legislation referred to:

Rules of the High Court 1980, O. 47 r. 7, O. 51A r. 1(1)(a), (b)

Sarawak Land Code, ss. 2, 13A, 13B, 13C, 113, 119(1), 143, 145(1), 148(2)(a), (b), (c), 150

For the plaintiff - Tan Thiam Teck; M/s Reddi & Co

For the registered chargee/applicant - Stanley Eddy; M/s Battenberg & Talma Advocates

Reported by WA Sharif

JUDGMENT

Clement Skinner J:

This is the hearing of an appeal against the decision of the learned deputy registrar who, on 3 February 2004 made an order (hereafter 'the said order') when giving directions for the sale of the 1st defendant's land known as Lot 9699 Section 64, Kuching Town Land District (hereafter 'the said land') which had been seized under a prohibitory order, in execution of a judgment that had been obtained against the 1st defendant (as well as the 2nd and 3rd defendants) by the plaintiff in this action.

Before stating what the terms of the said order made by the deputy registrar were, it will be necessary to narrate certain background facts since this appeal is not brought by the 1st defendant who owns the said land, but by a third party who is affected by the said order, namely, Shell Timur Sendirian Berhad (hereafter 'Shell Timur') in its position as chargee of the said land. The circumstances in which the said land became charged to Shell Timur are these.

By an agreement dated 12 December 1994 the 1st defendant agreed to grant a sublease of the said land to Shell Timur for a period of 30 years with an option to renew for a further 30 years ('the sublease agreement'), so that Shell Timur could construct a petrol filling and service station on a portion of the said land to be run as a 'Shell Station' by an operator selected by Shell Timur (hereafter 'the filling station').

Only two of the terms contained in the sublease agreement need be mentioned here. By cl. E & F of Schedule 1 and cl. 2.1 of Schedule 2, the sublease is expressly made conditional upon the consent of the Minister being secured by Shell Timur, which consent would also determine the commencement date of the sublease of the filling station. It was necessary to obtain the Minister's consent because by ss. 13A and 13B of the Sarawak Land Code Cap. 81 ('the Code') no estate, interest or right in any land may be held or acquired by a non-Malaysian citizen or by a corporation in which more than 50 per cent of the voting power is held by persons who are non-Malaysian citizens, except with the consent of the Minister. Shell Timur being a company affected by the prohibitions stated in ss. 13A and 13B, the consent of the Minister was required. It needs to be mentioned here that by s. 13C of the Code, the prohibitions mentioned in ss. 13A and 13B shall not apply to a charge.

By cl. 3 of Schedule 4 of the sublease, it was agreed that pending the consent of the Minister and its sublease being registered as a dealing at the Kuching Land Registry Office, Shell Timur would pay the 1st defendant a sum of RM300,000 as a 'Cash Incentive Consideration Deposit' to induce the 1st defendant to allow or to facilitate certain activities on the said land such as submission of plans for approval by the relevant authorities, constructing the filling station and subdividing the land on which it was built. As security for the RM300,000 paid to the 1st defendant, Shell Timur took a charge over the said land. The memorandum of charge executed on 28 December 1994 by the 1st defendant for the abovementioned purpose was duly registered at the Kuching Land Registry Office on 23 March 1995 as Instrument No. L 4653/1995 (hereafter 'the said charge'). Subsequently, by a variation of charge, the amount secured by the said charge was increased to RM488,962 (on 13 November 2001).

It needs to be mentioned here that there is no evidence before the court about whether the filling station is operational, but there is no dispute between the parties that the consent of the Minister has not been obtained to date.

The next event of significance is that on 30 August 2001 the plaintiff obtained a judgment against the 1st defendant (as well as the 2nd and 3rd defendants as guarantors) for various sums which total RM3,845,884.24 at varying interest rates. As I mentioned earlier, the plaintiff then took steps to enforce its judgment against the 1st defendant. Towards this end, it first obtained a Prohibitory Order against the said land on 11 April 2003 (which was subsequently renewed) and then applied for directions for sale of the said land. The summons for directions which was fixed for hearing on 3 February 2004 was served on Shell Timur as registered chargee.

At the hearing for directions, Shell Timur appeared through its counsel and made representation to the deputy registrar that the said land be only sold subject to the said charge (and varied charge) in its favour.

The deputy registrar made the said order giving the necessary directions for sale of the said land by public auction, but did not, in doing so, accede to Shell Timur's request that the said land be sold subject to its registered charge. Instead, the deputy registrar dealt with Shell Timur's position as chargee in Item 7 of the said order, when dealing with the proceeds of sale. Item 7 of the said order reads as follows:

> 7. That the proceeds of sale and any interest accrued thereon shall be paid out in the following manner:
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> (a) firstly, in payment of any costs, taxes, rates and other fees due to the Government;
>
> (b) secondly, in payment of the expenses and costs of and incidental to the notices and sale;
>
> (c) thirdly, in payment of the moneys which may then be due or owing by the 1st defendant to Shell Timur Sendirian Berhad under Memorandum of Charge No. L 4653/1995 registered at the Kuching Land Registry on 23rd March, 1995 and varieid by Memorandum of Variation of Charge Instrument No. L 25729/2001 registered at the Kuching Land Registry Office on the 13th November, 2001.

So the effect of the said order was that the said land was to be sold free of the said charge, but giving to Shell Timur as chargee, the same right against the proceeds of sale as it had against the said land. The deputy registrar also ordered that the document of title to the said land be deposited into court fourteen (14) days before the auction date.

It was further ordered that the said land be sold at a reserve price to be fixed by the registrar, based on a valuation report of a private valuer. Subsequently on 2 March 2004 the deputy registrar approved a proclamation of sale which set the reserve price for the said land at RM934,000. On 25 August 2004, on application by the plaintiff, the deputy registrar increased the reserve price for the said land to RM1.6 million.

Shell Timur is unhappy with the said order of 3 February 2004. Hence this appeal.

It is Shell Timur's case that the said order made by the deputy registrar is wrong because the said land can only be sold free of the said charge (and varied charge) with its consent as registered chargee which, in this case, it has refused to give. Shell Timur also contends that it should only hand over the document of title to the said land to the court on a successful auction taking place and not 14 days before the auction date as ordered by the deputy registrar.

Shell Timur's case is premised upon the following arguments. Under the Code, a 'dealing' is defined to include a charge. By operation of s. 119(1) and s. 113 of the Code, upon its being registered, a charge renders any land liable as security for the payment of money. Once registered, a charge has also been recognised as a legal interest over land short of proprietorship (see *T. Damodaran v. Choe Kuan Him* [1979] 2 MLJ 267 (PC), followed in *Chai Koh Shon v. Public Bank Bhd* [2004] 3 CLJ 189 (CA). Shell Timur further argues that once it became registered as chargee, it acquired an indefeasible interest in the said land which, apart from the following instances, namely, a sale of the said land by an order of the court under s. 150 of the Code upon its application under s. 148 ie, a chargee sale, or where the 1st defendant as chargor exercises its right of redemption under s. 145(1) of the Code, there are no other provisions for the removal of its interest from the register. According to Shell Timur, in the absence of any such provisions the said land can only be sold free of the said charge if it consents thereto as chargee, which it has not. Therefore, the said land must be sold subject to the said charge. Learned counsel for Shell Timur also submitted that when a judgment creditor, such as the plaintiff, lodges a prohibitory order against a judgment debtor's interest in land, he attaches that interest subject to any existing encumbrances registered against that interest, and in support of the point he makes referred me to cases such as *Karuppiah Chettiar v. Subramaniam* [1971] 2 MLJ 116 (FC) and *Chua Hee Hung v. QBE Supreme Insurance Bhd* [1990] 1 CLJ 669; [1990] 1 CLJ (Rep) 49. Shell Timur further contends that the plaintiff should

have applied for directions for the sale under O. 51A r. 1 Rules of the High Court ('RHC'), which, if it had done so, would have required its consent to any order of sale made.

The plaintiff's case is that Shell Timur's appeal should be dismissed as an abuse of the court's process. According to the plaintiff, although Shell Timur has brought this appeal to ostensibly protect its interest as a chargee, the rights which it seeks to assert are not directed at protecting or securing its interest or position as chargee, but rather to secure or achieve a collateral purpose, namely, to safeguard its contractual right against the 1st defendant to be granted a sublease for 60 years over the said land. As such, the plaintiff says that Shell Timur's appeal against the said order of 3 February 2004 is clearly an abuse of process because by the very terms of the said order, Shell Timur, as chargee, has been given the same right against the proceeds of sale as it had against the property sold, and so it has not suffered any prejudice to its security or in its position as chargee even though the effect of the said order is that the said land is sold free of the said charge (and varied charge).

In arriving at a decision in this appeal, it will be necessary to refer to certain provisions of law so as to put the assertions and contentions of the parties hereto into their proper perspective.

Shell Timur asserts that as the registered chargee, it has acquired certain indefeasible rights. In the context of the Sarawak Land Code what do those rights consist of? By s. 2 of the Code the word 'charge' means:

> any charge on land created under the provisions of this code for securing:
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> (a) the re-payment of a loan or satisfaction of any existing debt;
>
> (b) the re-payment of future advances or payment or satisfaction of any future or ascertained debt or liability contingent or otherwise;
>
> (c) the payment to the holders for the time being of any bonds, debentures, promissory notes or other securities, negotiable or otherwise, made or issued by the chargor before or after the creation of the charge; or
>
> (d) the payment to any person or persons by yearly or periodical payments or otherwise of any annuity, rent, charge or sum of money other than a debt.

The provisions relating to the creation of a charge under the Code are found in s. 143, the relevant parts of which read:

> (1) Whenever any estate or interest in land is intended to be charged with, or made security for, payment of any money, the registered proprietor and chargee shall execute a memorandum of charge in Form H(1) or H(2) in the First Schedule, ...

For present purposes another relevant provision is s. 119(1) of the Code which concerns registration of instruments and which states:

> (1) No instrument shall be effectual to pass any land or any interest therein, or render any land liable as security for the payment of money, until it has been registered in accordance with this Part.

What is the effect of registration under the Code? Section 132(1) provides that:

> (1) Subject to the provision of this Code, the registered proprietor of any estate or interest in land to which this section applies shall, except in the case of fraud, hold such estate or interest subject to the interests noted on the Register but free from all other interests except:
>
> (a) the estate or interest of a proprietor included in the Register in priority to the title under or through which the first mentioned registered proprietor claims, being an estate or interest to which this section applies;
>
> (b) as regards any portion of land included in the issue document of title by virtue of a wrong description:
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> Provided that this exception shall not apply if the registered proprietor is a purchaser in good faith and for value of the portion of land affected, or derives title through such a purchaser;
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> (c) the implied conditions, obligations and restrictions referred to in section 32;
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> (d) the interest of a tenant in possession of land for a term not exceeding one year;
>
> (e) any charge affecting the land under any written law; and
>
> (f) any easement lawfully created and subsisting on the 1st day of January, 1958, or at such later date when the estate or interest affected by such easement becomes included in the Register.

(2) This section shall apply to any estate or interest in land included in the register, other than an estate or interest included in a previous register under the former Land Ordinance and included in the Register by reason only of subsection (2) of section 112 or an estate or interest acquired by a foreign person, foreign company, foreign corporation or foreign body in contravention of section 13A, 13B, 13C or 13E.

The next provision of the Code which is relevant to this appeal is s. 148 which deals with the remedies that are available to a registered chargee, which reads:

(1) If default be made in the payment of the principal sum, interest or other moneys secured by a charge, or in the observance of any agreement, expressed of implied in any charge, the chargee may give the chargor, his personal representatives or assigns, notice in writing that the chargee will resort to all available remedies unless such default is remedied.

(2) If the chargor fails to comply with the requirements of any notice lawfully given, the chargee shall be at liberty to apply to the High Court:

(a) for an order entitling him to enter into possession and to be registered as proprietor of the charged land;

(b) to receive the rents and profits of the charged land; or

(c) for the sale of the charged land, and the court after hearing the evidence may make such order as in the circumstances seems just, provided ... (not relevant).

When the above provisions are read together it will be seen that on a charge being registered, the land it relates to is rendered liable as security for all sums of money and interest that may be payable under the charge instrument. The indefeasible 'interest' which the chargee acquires qua registered chargee is not a beneficial or equitable interest in the charged land but a legal interest affecting the land to the extent mentioned in the charge as well as the remedies available to the chargee under s. 148(2)(a), (b) and (c) in the event of a default arising under the charge, namely, to apply for an order entitling the chargee to enter into possession and to be registered as proprietor of the charged land or to receive the rents and profits of the charged land or for the sale of the charged land. But it is important to note that while the provisions of s. 148(2)(a), (b) and (c) of the Code are indicative of the remedies available to a chargee, these remedies are only available on default of the chargor and granted only at the discretion of the court as in the circumstances seems just.

Reverting to the appeal before me, can it be said that the said order of 3 February 2004 is inconsistent with any of the rights above described of Shell Timur as chargee or that it had compromised Shell Timur's security for the repayment of money it is owed by the 1st defendant under the said charge? In my judgment, I do not think it is or has. In the first place, this is not a case where Shell Timur is seeking to avail itself of the statutory remedies available to it upon a default made by the 1st defendant under the instrument of charge. So there is no question of the remedies stated in s. 148(2)(a), (b) and (c) being available to Shell Timur at the hearing before the deputy registrar or at this appeal.

In the second place, even if it can be argued that Shell Timur's rights as chargee includes its right to enter into possession of the said land and to be registered as its proprietor and so the said order of 3 February 2004 infringes that right, the short answer to such a contention is that that right is only available on application and granted at the discretion of the court; it does not follow as a matter of course that the court will grant such an order to Shell Timur because in the exercise of its discretion the court will have to consider whether the grant of such an order would, on the facts of this case, offend against the policy behind ss. 13A and 13B of the Code.

In the third place, what Shell Timur has at the present moment as registered chargee, is a security over the said land for the re-payment of all amounts stated in the charge. According to the letter dated 30 January, 2004 from Shell Timur's lawyers, the outstanding amount under the said charge (and varied charge) is RM300,000. In my judgment, Shell Timur's security for the repayment of this sum has not been prejudiced because by Item 7 of the said Order Shell Timur has been given the same right against the proceeds of sale as it had against the said land. And there is no danger that Shell Timur would not be paid the amount due to it as registered chargee because a reserve price of RM1.6 million has been fixed for the said land. Shell Timur argues that by the order of 3 February 2004 it has been removed from the register as chargee, which runs counter to the principles of indefeasibility. But what are the indefeasible rights of a chargee in the context of the present facts? I have, in my respectful view, stated what they are earlier and I do not see this as a case where the plaintiff is trying to defeat the security which Shell Timur has taken for the money it has advanced to the 1st defendant. As such it is my view that arguments based on indefeasibility have no application in the context of the present appeal and should not be allowed to thwart the legitimate efforts of the plaintiff to enforce its judgment because the said order only takes effect on a successful sale, in which event Shell Timur will be paid what is due to it under the charge. As such the rights of Shell Timur as chargee have not been defeated by the said order.

With regard to the point taken by Mr. Eddy that any attachment of the 1st defendant's interest in the said land by way of a prohibitory order must be subjected to all existing encumbrances registered against the said land, I have no difficulty agreeing with the point taken or with the principles stated in the two cases cited to me, but it is my view that what was stated in those two cases and the point Mr. Eddy takes have no application to the facts before me and do not assist Shell Timur here because the plaintiff is not seeking to ignore the position of Shell Timur as registered chargee. Item 7 of the said Order of 3 February 2004 gives to Shell Timur the same right against the proceeds of sale as it had against the said land and recognises as well the priority of Shell Timur to be paid the moneys it is due under the charge before any sum is paid to the plaintiff as judgment creditor.

In the circumstances it is patently clear that Shell Timur does not bring this appeal to have its position as registered chargee of the said land protected and vindicated. In reality what has been put in jeopardy by the plaintiff's enforcement of its judgment through the seizure of the said land by the prohibitory order and the said order giving directions for its sale, is Shell Timur's position as unregistered sublessee of the said land for 60 years. As Mr. Tan Thiam Teck of counsel for the plaintiff points out, and correctly in my view, if the said land is sold free of the said charge, any successful purchaser will not be bound by the contractual arrangements between Shell Timur and the 1st defendant. On the other hand, if the said land is ordered to be sold subject to the said charge then any successful bidder would not only have to pay the reserve price, but also liable to pay Shell Timur all sums payable under the said charge as well which, according to Mr. Tan, would effectively diminish, if not kill off any probability of the said land being successfully sold off.

I therefore agree with counsel for the plaintiff that Shell Timur's real purpose in this appeal is not to protect its interest as registered chargee but to frustrate the intended sale of the said land, thereby preserving Shell Timur's contractual rights as against the 1st defendant to be granted a sublease of the said land should the Minister's consent be obtained. In that sense, this appeal, although on the face of it is an entirely legitimate process, is really brought to serve a collateral purpose.

I find it appropriate here to refer to what was said by the Court of Appeal in *Malaysia Building Society Bhd v. Tan Sri General Ungku Nazaruddin bin Ungku Mohamed* [1998] 2 CLJ 340 about abuse of process:

> Sometimes abuse can be shown by the very steps being taken in the courts ... at other times, the abuse can only be shown by extrinsic evidence that the legal process is being used for an improper purpose. On the face of it, in any particular case, the legal process may be entirely proper and correct. What may make it wrongful is the purpose for which it is used. If it is done to exert pressure so as to achieve an end which is improper in itself, then it is a wrong known to the law.

I now turn to the complaint of Shell Timur that the plaintiff should have applied for the directions for sale under O. 51A r. 1 RHC. To better understand why this point is being taken, reference should first be made to O. 51A r. 1 which states:

> 1(1) Where assets are realised by sale or otherwise in execution of an order or judgment and more persons than one have, prior to the realisation, attached the property from which such assets have been realised in execution of orders or judgments for the payment of money against the same judgment-debtor and have not obtained satisfaction thereof, the assets, after deducting the costs of realisation, shall be distributed rateably among all such persons:
>
> Provided as follows:
>
> (a) where any property is sold subject to a charge, the chargee shall not as such be entitled to share in any surplus arising from such sale;
>
> (b) where any property liable to be sold in execution of an order or judgment is subject to a charge, the Court may, with the consent of the chargee, order that the property be sold free from the charge, giving to the chargee the same right against the proceeds of the sale as he had against the property sold;
>
> (c) where any immovable property is sold in execution of an order or judgment ordering its sale for the discharge of an incumbrancer thereon, the proceeds of sale shall be applied
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> first, in defraying the expenses of the sale;
>
> secondly, in discharging the interest and principal money due on subsequent incumbrances (if any);
>
> thirdly, in discharging the interest and principal money due on subsequent incumbrances (if any);

fourthly, rateably among the holders of orders or judgment for the payment of money against the judgment-debtor who have, prior to the sale of the said property, applied to the Court which passed the order or judgment ordering such sale for execution of such orders or judgment and have not obtained satisfaction thereof; and

(d) where the property from which such assets have been realised has prior to realisation been attached by the High Court and also by one or more of the Subordinate Courts, no holder of a decree passed by a Subordinate Court shall be entitled to share in the distribution of such assets unless he shall prior to realisation have given notice in writing to the Registrar of the attachment at his instance of such property by such Subordinate Court.

Having seen what O. 51A r. 1(1)(a) and (b) states, it is easy to understand why Shell Timur contends that the direction for sale should have been applied for under that rule, since its consent would then need to be given if the said land is to be sold free of its charge. According to Shell Timur, O. 51A is a rule of court which recognises and acknowledges the indefeasibility of the interest of a chargee. Therefore, according to Shell Timur, "in an execution sale, an encumbered land can be sold free of the incumbrance only with the consent of the chargee; otherwise it would have to be sold subject to the charge".

I cannot agree with this contention. In the first place, O. 51A is only concerned with the rateable distribution of the proceeds of sale, not directions to effect a sale. Here, there is no question of more than one person having attached the said land as judgment creditors and not having obtained satisfaction of their judgment. So the applicability of O. 51A does not arise at all.

In the second place, since the said land is being sold off following its seizure under O. 47 r. 7, the directions for sale were correctly applied for under that rule read with O. 31 r. 2(4) RHC.

In the third place, I do not think that Shell Timur is correct in its contention that under O. 51A, unless the consent of a chargee is obtained, charged land cannot be sold free of the charge. To me what is stated in para (c) of O. 51A r. 1(1) is itself indication that despite the 'indefeasible' interest of a chargee, the court can order that charged land be sold free of the charge provided that an appropriate order is made to ensure that the chargee is given the same right against the proceeds of sale as he had against the property sold. If the position were otherwise, I agree with Mr. Tan that any judgment debtor can, by entering into a charge arrangement with a friendly party, be in a

position to frustrate execution proceedings which may be taken out against their land since such chargee(s) would always be in a position to insist on the sale of the charged land by way of execution proceedings being sold subject to their charge or by not even consenting to such sale.

With regard to Shell Timur's complaint that it should not be required to hand over the document of title to the court 14 days before the date of sale, I can see no reason why that should not be so. It is a proper order to make to ensure that when the auction sale is held everything is in place.

In the result I dismiss Shell Timur's appeal with costs.